In the High Court of Judicature at Madras

Dated: 15.12.2005

Coram

The Honourable Mr.JUSTICE P.D.DINAKARAN
and
The Honourable Mr. JUSTICE K.MOHANRAM

A.S.No.938 of 1989

1. M/s. Triveni Enterprises (Registered)
   rep. by P.Ramarao & R.Radhakrishna Chetty
2. V.Lalitha
3. M.Sukumari Venugopal
4. T.Leelavathi
5. T.Vasanthakumari
6. Jamuna
7. M.Suseelamma
8. N.S.Nagarathinamma

(2 and 3 and 5 to 8 rep. by their Power of Attorney Agent Mr.Radhakrishna Chetty)

.... Appellants

Vs.

1. G.Manjulamba @ G.S. Manjula
   rep. by her Power of Attorney Agent
   G.Surendra Gupta
2. G.Kanagarathinamma
3. P.M.Lalitha

.... Respondents

APPEAL filed under Section 96 of the Civil Procedure Code against the judgment and decree dated 13.1.1987 made in O.S.No.4286 of 1982 on the file of 17th Assistant Judge, City Civil Court, Madras.

For Appellants : Mr. P.K.Sivasubramaniam
For Respondents: Mr.A.Venkatesan - R1

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J U D G M E N T

(Delivered by P.D.DINAKARAN,J)

This appeal is directed against the decree and judgment dated 13.1.1987 made in O.S.No.4286 of 1982 on the file of 17th Assistant Judge, City Civil Court, Madras.

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2. The appellants are the defendants in said suit laid by the first respondent herein for a declaration that she has retired from the first defendant firm with effect from 03.12.1979 and for payment of a sum of Rs.12,288.61 and Rs.10,351.39 for interest upto date of the plaint, totaling a sum of Rs.22,640/-, which sum, the appellants/defendants failed and neglected to pay in spite of repeated demands.

3. For the purpose of convenience, the parties are arrayed as in the Original Suit.

4. In brief, the first defendant was a partnership firm carrying on finance business and defendants 2 to 10 and the plaintiffs were partners of the firm, as per the partnership deed dated 2.1.1975. As per the terms of the partnership deed, referred to above, a partner is entitled to retire from the firm by giving notice of desire to other partners of the firm. Accordingly, the plaintiff by her letter dated 3.12.1979, expressed her desire to retire from the first defendant firm and the said letter was received by the other partners of the firm on 4.12.1979. Hence, based on the statement of accounts of the firm as on 31.3.1977, the plaintiff sought for settlement of dues, namely, Rs.12,288.61 and Rs.10,351.39 for interest upto date of the plaint, totaling a sum of Rs.22,640/-. Since the defendants failed and neglected to pay the said sum, the plaintiff has filed the above suit.

5. The above suit was resisted by defendants 1 to 6 by a common written statement, which was also adopted by defendants 7,8 and 10 by filing an independent memo. The 9th defendant remained ex parte. According to defendants 2 to 8 and 10, during each year, the profits earned at the closing of the financial year, namely, 31st March, were adjusted to the current account of each partner and on such current account only, interest was calculated at 13% per annum. The further case of defendants 2 to 8 and 10 was that the claim of the plaintiff based on the account as on 31.3.1977 was not sustainable in law and she expressed her desire to retire only on 3.12.1979 and the same was received by the other partners of the first defendant firm on 4.12.1979, on which date, the firm was in loss. Hence, the plaintiff was not entitled to any dues from the defendants.

6. Based on the above rival contentions, the trial Court framed the three issues, namely,

i) Whether the plaintiff is entitled to the

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declaration as prayed for?

ii) Whether the plaintiff is entitled to any amount as claimed?

iii) To what other relief the plaintiff is entitled?

7. Substantiating their respective cases, the plaintiff examined one Surendra Gupta as P.W.1 and marked six documents as Exs.A1 to A6 , out of which Exs.A1, 2 and 4 are relevant, namely, the statement of account, notice of the plaintiff expressing her desire to retire from the firm and acknowledgment of the same respectively. On the side of the defendants, one Radhakrishnan was examined as D.W.1 and marked 26 documents as Exs. B1 to B26, out of which, Exs.B23 and B24 are relevant, namely, the income tax assessment orders of the firm for the assessment years 1978-79 and 1979-80.

8. The trial Court after appreciating the evidence adduced by both sides, held that the plaintiff is entitled to retire by expressing her desire for retirement as per Exs.A2 and A3, which is not disputed and since the defendants have not proved that they were maintaining accounts properly, based on the statement of accounts relied on by the plaintiff as on 31.3.77, decreed the suit as prayed for and rejected Exs.B23 and B24 as though the same are statement of accounts not supported with the audit report.

9. Mr.P.K.Subramaniam, learned counsel appearing for the appellants has invited our attention to Exs.B23 and B24 and contends that the said exhibits are not the statement of accounts, but they are income tax assessment orders of the Income Tax Department filed on behalf of the first defendant firm as well as on behalf of the partners of the firm, including the plaintiff as on 31.12.1979 and as per the said exhibits, the first defendant firm was in loss and the trial Court was not correct in decreeing the suit for a sum of Rs.22,640/- as claimed by the plaintiff without taking into account the assessment orders, Exs.B-23 and B-24. According to the learned counsel, since the firm was in loss during the period 1978 and 1979, that has to be taken into account for arriving at the amount payable to the plaintiff as the plaintiff expressed her desire to retire by letter dated 3.12.1979 only.

10. On the other hand, learned counsel appearing for the first respondent/plaintiff supported the judgment and decree of the trial court reiterating the points made before the trial Court.

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11. We have given our careful consideration to the submissions made by both the parties.

12. It is not in dispute that the plaintiff by letter dated 3.12.1979 expressed her desire to retire from the partnership firm which was acknowledged by other partners on 4.12.1979. The core contention of learned counsel for the appellants is that the statement of accounts as on 31.3.1977 should not be taken into consideration when the plaintiff opted to retire with effect from 3.12.1979. According to the learned counsel, the firm was in loss during 1978 and 1979.

13. At the outset, we are of the view that since the plaintiff expressed her desire to retire on 3.12.1979, the accounts have to be finalised upto that date only, and not with reference to the statement of accounts as on 31.3.1977. The trial Court committed an error by treating Exs.B-23 and B-24 as statements of accounts ignoring the fact that they are income-tax assessment orders which stand as a proof for determining the profit and loss of the firm during the year 1978 and 1979, but, on the other hand, it took into account the statement of accounts as on 31.3.1977 submitted by the plaintiff and decreed the suit as prayed for.

14. In view of the undisputed fact that Exs.B-23 and B-24 are income-tax assessment orders of the firm for the assessment years 1978-79 and 1979-80, the question that arises for our consideration is whether the profit and loss of the firm as reflected in Exs.B-23 and B-24, namely, income-tax assessment orders is binding on the plaintiff who was concededly, a partner of the firm as on 3.12.1979 and ceased to be a partner only with effect from 3.12.1979.

15. The Apex Court, while determining the relevant date of retirement of a partner from the firm, in PAMURU VISHNU VINODH REDDY v. CHILLAKURU CHANDRASEKHARA REDDY (2003 AIR SCW 1001), has held as follows:

> " Section 37 itself makes it clear that the relevant date is the date on which he ceases to be a partner. The proviso to section 37 also says that if option is given to surviving partners to purchase the share of an outgoing partner and if any partner assuming to act in exercise of the option does not in all material respects comply with

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> the terms thereof, he is liable to account under section 37.
>
> Therefore, in any view of the matter, the relevant date for the purpose of ascertaining the value of the share of the plaintiff is the date on which he ceased to be a partner as it is a case where there was an express agreement between the parties to sell the share of the plaintiff in favour of Sri M.Subbareddy and with effect from that date he became a secured creditor and there was a debt due to him from the other partners who are continuing in the partnership business. It is in the nature of a debt due to him or the amount due to him is unpaid purchase money. Therefore, the relevant date is the date on which he ceases to be a partner."

16. In the instant case, admittedly, the plaintiff expressed her desire to retire by letter dated 3.12.1979 which was acknowledged by other partners on 4.12.1979. Therefore, the other partners agreed the retirement of the plaintiff from the firm with effect from 3.12.1979. Following the ratio laid down by the Supreme Court in the above said case, the plaintiff is entitled to claim the amount due to her only based on the accounts as on 3.12.1979. Therefore, the trial Court was not correct in holding that the plaintiff is entitled to claim the amount on the basis of statement of accounts as on 31.3.1977.

17. The next question that arises is whether the income-tax assessment orders, Exs.B-23 and B-24 can be taken into account for the purpose of arriving at the amount due to the plaintiff in the absence of statement of accounts.

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18. The assessment orders are public documents within the meaning of section 74 of the Evidence Act and can be relied upon for the purpose of determining the amount due to a retired partner as held by the Andhra Pradesh High Court in SOMANNA v.SUBBA RAO (AIR 1958 A.P. 200) wherein it was held that an income-tax return as well as a statement filed in support of it is a public document.

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19. That apart, it is relevant to refer to the decision of the Supreme Court in DEBI PRASAD v. TRIBENI DEVI (AIR 1970 S.C. 1286). In that case, one Gopal Das filed income-tax returns and he was assessed as the Karta of a Hindu Undivided Family and the assessment orders proceeded on the basis that one Gopal Das and Shyam Behari Lal constituted a joint Hindu family. In the factual backdrop, the Supreme Court held that the assessment orders have considerable evidentiary value and these documents came into existence at a time when there was no dispute. Even in the case on hand, the assessment orders Exs.B-23 and B-24 relate to the period when the plaintiff continued to be a partner of the firm.

20. We are therefore of the view that the assessment orders, viz., Exs.B-23 and B-24 have evidentiary value in so far as the question of determining the amount due to the plaintiff is concerned and hence, Exs.B-23 and B-24 are binding on the partners of the first defendant firm, including the plaintiff. It is not in dispute that as per Exs.B23 and B24, the first defendant firm was in loss on the date of notice of retirement by the plaintiff, namely, on 3.12.1979 and the moneys due from the third party debtors to the first defendant firm were shown as bad debts, which was also accepted by the Income Tax Department. In such event, the plaintiff is not entitled to the amount claimed on the basis of statement of accounts dated 31.12.1977.

21. In this view of the matter, we hold that the trial Court was not correct in disbelieving the Exs.B-23 and B-24 assessment orders and the trial Court has not properly appreciated the evidence in granting the decree as prayed for by the plaintiff. Hence, we are unable to sustain the decree and judgment dated 13.1.1987 made in O.S.No.4286 of 1982 and accordingly, the same is set aside. The appeal stands allowed. No costs.

sl/na

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

The Registrar, City Civil Court, Madras.

2. The Record Keeper, VR Section, High Court, Madras

+ one cc to Mr. A. Venkatesan, Advocate sr no. 49374

+ one cc to Mr. P.K. Sivasubramanian, Advocate sr no. 49317

LA(CO)
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